IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE NINETEENTH DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE K.C. BHANU

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WRIT PETITION NO : 3415 of 2002

Between:

P.Srinivasa Rao, S/o. Jagannadha Rao,
R/o. D.No.4-159, Prasad Nagar,
V.T.Agraharam, Vizinagaram-4.

..... PETITIONER

AND

1 Asst.Works Manager,
Zonal Work Shop, A.P.S.R.T.C.,
Vizianagaram.
2 Works Manager,
Zonal Work shop, A.P.S.R.T.C,
Vizianagaram.
3 Executive Director,
A.P.S.R.T.C, Vizianagaram.

.....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue an order, direction or a writ one in the nature of "MANDAMUS" declaring (1) the order dt.30.1.2001 issued by the 3rd respondent in treating the period from the date of removal to the date of reinstatement as not on duty for all purposes and in posting the petitioner to Palasa, and in reducing the salary of the petitioner to minimum time scale (2) the orders of respondents in imposing the punishment on the basis of exparte enquiry proceedings as illegal, arbitrary and unconstitutional and

set aside the order dt.30.1.2001 of the 3rd respondent to the extent of the treating the period from the date of removal to the date of reinstatement as not on duty for all purposes and in posting the petitioner to Palasa, and consequently direct the respondents to grant all the benefits by regularizing the period from the date of removal to the date of reinstastement as on duty for all purposes and pay the salary by adding timely increments in the scale of pay attached to the post of Kalasi and pass such other relief or reliefs as this Hon'ble Court may deem fit, just and necessary in the circumstances of the case.

Counsel for the Petitioner: MR.A.SRINIVASA SARMA

Counsel for the Respondent Nos.1 to 3: KUM.B.G.UMA DEVI (Not Present)

The Court made the following :

ORDER:

This writ petition has been filed seeking writ of mandamus declaring the order dated 30.1.2001 of the 3rd respondent in treating the period from the date of removal to the date of reinstatement as not on duty for all purposes and in posting the petitioner to Palasa and in reducing the salary of the petitioner to the minimum time scale and the orders of the respondents in imposing the punishment on the basis of ex parte enquiry proceedings as illegal and arbitrary and set aside the same to the extent of treating the period from the date of removal to the date of reinstatement as not on duty for all purposes and in posting the petitioner to Palasa and consequently direct the respondents to grant all the benefits by regularizing the period from the date of removal to the date of reinstatement as on duty for all purposes and pay the salary by adding timely increments in the scale of pay attached to the post of Kalasi.

The case of the petitioners is that he joined in A.P.S.R.T.C., as Kalasi at Vizianagaram on 27.9.1990, since then he is rendering services with satisfaction to his superiors. The petitioner fell sick and he submitted leave application along with medical certificate from 23.11.1998 to 4.1.1999. Subsequently on 1.7.1999 also he applied for leave and it was rejected by the management. Thereafter, the petitioner was removed from service for his unauthorized absence during the above period by the first respondent by his order dated 10.7.1999. Meanwhile, the respondents initiated enquiry against the petitioner and a show cause notice dated 5.4.1999 has been issued by the first respondent. Against the order of removal dated 8.7.1999, the petitioner made an appeal to the 2nd respondent and the same was rejected. Thereafter, the petitioner preferred a revision petition before the 3rd respondent revisional authority and the petitioner was reinstated into service by order dated 30.1.2000 at the minimum scale of Shramik by treating the period of the date of removal till the date of reinstatement as not on duty for all purposes. Aggrieved by the said order dated 30.1.2000, this writ petition has been filed.

Counter affidavit has been filed by the respondents wherein it is stated that the petitioner was appointed as Khalasi under 30% employees children quota under Regulation 17 of Workshop, Vizianagaram with effect from 27.9.1990. It is stated that the petitioner without prior permission or sanction of leave absented for duty from 23.11.1998 to 4.1.1999. It is stated that a charge sheet was issued to the petitioner on 4.1.1999 for his unauthorized absence, but the petitioner failed to submit his explanation.

The learned counsel for the petitioner submits that the petitioner was absent for about 40 days and the petitioner was removed from service by the disciplinary authority and that enquiry was not conducted in a fair manner and that the respondents have violated the principles of natural justice and, therefore, the punishment imposed by the respondents is disproportionate to the proved misconduct and seeks to set aside the same.

On the other hand, the learned Standing Counsel for the respondents opposed the same on the ground that after conducting proper enquiry, punishment has been imposed and, therefore, there are no grounds to interfere with the same.

A perusal of the record goes to show that the petitioner was absented to duty from 23.11.1998 to 4.1.1999 without prior sanction of leave. A charge memo has been issued seeking for his explanation and a detailed enquiry was conducted. Thereafter, the disciplinary authority ordered for removal of the petitioner from service and the appeal filed by the petitioner was also dismissed. On the review petition preferred by the petitioner, the 3rd respondent has passed the impugned order dated 30.1.2001 ordering reinstatement of the petitioner into service at the minimum of the time scale of Shramik and the period of absence from the date of removal till he reports to duty shall be treated as not on duty for all purposes. Though it is sought to be contended by the learned counsel for the petitioner that the procedure is not followed in conducting the enquiry, but there is no latches or irregularity in conducting the regular departmental enquiry. The enquiry officer has conducted a detailed enquiry and a reasonable opportunity was given to the petitioner to defend his case, but he did not participate in the said enquiry and, therefore, it cannot be said to be improper and contrary to the rules governing the service conditions of the petitioner. The learned counsel for the petitioner submits that as the petitioner fell sick and immediately two or three days thereafter he sent medical certificate to the concerned authority and, therefore, he seeks to modify the punishment imposed by the revisional authority which is disproportionate to the proved misconduct. Admittedly, the petitioner is maintaining clean record for the last nine years except one punishment of deferment of annual increment on one occasion during September, 1997. The only mistake committed by the petitioner is that he did not obtain prior sanction of the leave. Since the petitioner was not doing well, it may not be possible for him to rush to the office and file an application and get sanction from the competent authority. The fact remains that the

petitioner was absented for about 40 days without sanction of leave. Therefore, he deserves some punishment considering the totality of the case and the punishment imposed by the 3rd respondent is disproportionate to the proved misconduct. Since the pay has already been fixed at the minimum of the time scale, the period from the date of removal till the date of reinstatement ought not to have imposed on the petitioner and the same should have been treated as spent on duty for all practical purposes. Therefore, the said period shall be treated as continuity of service for all practical purposes.

With the above modification the writ petition is allowed in part.

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19.7.2005

kpr

That Rule Nisi has been made absolute as above.

Witnesses the Hon'ble Acting Chief Justice Bilal Nazki on this the Tuesday, the Nineteenth day of July, Two thousand and five.

To

1 Asst.Works Manager,
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4 2 cc to the S.C. for A.P.S.R.T.C.

5 2 CD copies